

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, "B" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA. No. 264/JPR/2023  
निर्धारणवर्ष / AssessmentYear : 2018-19

Roop Kumar Chopra 1014, P/O Chopra Brothers, Mishra Raja Ji Ka Rasta, Chandpole Bazar, Jaipur- 302 003	बनाम Vs.	The Pr. CIT Jaipur -1 Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AANPC 0560 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Dheeraj Borad, CA  
राजस्व की ओरसे / Revenue by : Shri Ajay Malik, CIT

सुनवाई की तारीख / Date of Hearing: 08/02/2024  
उदघोषणा की तारीख / Date of Pronouncement : 28 /02/2024

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal of the assessee is directed against the order of the Id. PCIT-1, Jaipur dated 21-03-2023 for the assessment year 2018-19 in the matter of Section 263 of the Act wherein the assessee has raised the following grounds of appeal.

“That on the facts and in law the impugned order u/s 263 of the Act dated 21-03-2023 passed by the Id.PCIT, Jaipur considering the assessment order dated 01-02-2021 passed by the AO u/s 143(3) read with section 143(A) and 143(3B) of the Act taking into consideration the relevant material produced and explanation offered before him by the assessee in compliance to the notice notices issued to him u/s 142(1) as well as u/s 143(2) of the Act by the AO as erroneous in so far as it is prejudicial to the interest of the Revenue for the purpose of Section 263 of the Act and consequently setting aside the assessment order passed dated 01-01-2021 to be made afresh made is most arbitrarily, unjust, untenable and liable to be vacated.”

2.1 Brief facts of the case are that the case of assessee was selected for Limited Scrutiny under the E-assessment Scheme, 2019 on the following issues.

<u>S.N.</u>	<u>Issues</u>
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- |    |   |
|----|---|
| 1. | Deductions from income and other sources. |
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It is noted from the assessment order that the assessee derived income from Interest and Business income during the year under consideration. The assessee was partner of M/s. Bhairun Dan Jaskaran & M/s. Chopra Brothers. It is also noted that the AO after perusal of the return of income of the assessee, material available on record including the reply filed by the assessee before him in response to notice issued u/s 142(2) of the Act found that the issue raised hereinabove was accepted and thus no addition is made as per findings of the AO. Conclusively the AO at para 4 of his order observed as under:-

*“3. After perusal of the Return of income, material available on record and the reply filed on 3.12.2020 and 24.12.2020 in response to the notices issued under section 142(1) of the act the explanation of the assessee on the above issue is accepted and no addition is made.*

*4. The assessment of income is done as per computation sheet and the sum payable is determined as per the demand notice.”*

2.2 On culmination of the assessment proceeding the Id. PCIT called for the records and upon examination of the details/ record available before him observed that the assessment order passed on 01-01-2021 by the AO appears to be erroneous as well as prejudicial to the interest of revenue and set aside the same with

direction to make afresh assessment order on the point of interest paid amounting to Rs.2,06,07,468/- and brokerage paid amounting to Rs.21,32,687/-. The relevant observations as made by the Id. PCIT in his order are mentioned as under:-

“10. I have perused the order of the AO, the submissions of the assessee as well as the documents placed on record. Perusal of the assessment records showed that the AO had allowed set off of loss from "income from other sources against business Income which is not correct as per the Income Tax Act, 1961. As per section 57 (iii) of the Act, income chargeable under the head "Income from other sources should be completed after allowing deduction for any expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income. Total "income from other sources" earned by the assessee is as follows:-

1. Interest on Saving Bank A/c with Vijaya Bank	162/-
2. IDBI Bank	212/-
3. Kotak Mahindra	4038/-
4. Interest from other parties	<u>12550652/-</u>
	1,25,55,064/-

11. Against the above income earned "from other sources the assessee has claimed the following deductions:-

1. Interest paid	2,06,07,468/-
2. Brokerage paid	21,32,687/-
3. Bank charges	213/-
4. Legal fees	<u>17,300/-</u>
	2,27,57,668/-

As per section 57 of the Act the deduction under the head "Income from other Sources would be limited to Rs.12,555,004/. The Act does not allow set off of excess expenditure (22,757,604- 12,555,064 10,202,604) against "income from blithness" which has been allowed by the A.O.

12 The assessee has paid interest of Rs 2,06 07,468/- to sundry creditors and brokerage of Rs.21,32,687/- to various parties. During the course of proceedings under section 263 of the Act, the assessee furnished list of 250 parties from whom interest had been paid during the year. The said list mentions the PAN and interest amount as well l as the remark that the payment has been made by Bank. However, no bank account statement has been furnished by the assessee. In 185 of the 250 cases listed above the address has been mentioned as "Jaipur" "Churu" "Arunachal Pradesh" etc. which

appears to be non-traceable. Moreover the assessee has furnished confirmation from 23 parties only. Perusal of dated 31/12/2020 placed on the assessment record which was submitted by the assessee during the course of assessment proceedings shows that the assessee has not submitted even the above documents before the AO. Thus, the Interest paid by the assessee was not inquired into by the AO during the course of assessment proceedings.

13. During the course of proceedings under section 263 of the Act, the assessee has submitted details of brokerage paid to 12 different parties totaling to Rs 21,32,687/-. The said details was not furnished to the AO. Hence the AO accepted the expenditure incurred on the account of brokerage paid without any enquiry, Therefore the **AO has not verified the identity of the creditors and the brokers.**

14. Perusal of the assessment record also shows that the AO has not verified the nexus between Interest paid and interest received by the assessee.

15. As discussed above, the Assessing Officer failed to apply his mind on the material available on record and failed to invoke the applicable provisions of law. This in turn has resulted in passing of an erroneous order by the Assessing Officer in the case due to non-application of mind to relevant material, an incorrect assumption of facts and an incorrect application of mind to the law which is prejudicial to the Interest of the revenue and hence liable for revision under section 263 of the Act. The Hon'ble Supreme Court in the case of Malabar Industrial Limited V/s CIT 243 ITR it has held as under:-

\*.... An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind."

16. Considering all the facts and circumstances of the case and for the reasons discussed above, the assessment order dated 01.01.2021 for A.Y. 2018-19 passed by the AO is held erroneous in so far as it is prejudicial to the interests of the revenue for the purpose of section 263 of the Act. The said order has been passed by the Assessing Officer in a routine and casual manner without verification of the issues discussed in above paras. The order of the Assessing Officer is, therefore, liable to revision under the explanation (2) clause (b) and clause (a) of section 263 of the Income Tax Act, 1961. The assessment order is set aside to be made afresh in the light of the observations made in this order. The AO is required to make necessary verification and examine in depth the issues discussed above In accordance with the prevailing law to determine the correct income of the assessee liable to tax for the AY 2018-19 after affording reasonable opportunity to the assessee."

2.3 During the course of hearing, the ld.AR of the assessee prayed that the ld.

PCIT has wrongly invoked the provisions of Section 263 as well as wrongly set

aside the order of the AO whereas the AO after examination of the information and other details submitted by the assessee, accepted the returned income of the assessee for which the Id. AR of the assessee filed the detailed written submission as under:-

### SUBMISSIONS IN REGARD TO ALL THE GROUNDS OF APPEAL

#### GROUND OF APPEAL NO. 1

This ground of appeal is against holding by the learned PCIT vide his order u/s 263 of the I. T. Act dated 21/03/2023, the assessment order dated 01/01/2021 for AY 2018-19.as erroneous in so far as it is prejudicial to the interest of the revenue for the purpose of sec 263 and setting aside the same to be made afresh. In this regard it is respectfully submitted as under:-

1. That during regular assessment proceedings the A.O. issued notices u/s. 143(2) and section 142(1) and the assessee had complied with each and every notice issued to him and had filed through e-proceedings all the details and supporting documents required by these notices and in view of this factual position and under the facts and circumstances of the case and under the law the above mentioned order dated 21/03/2023 passed by the Ld. PCIT u/s 263 of the IT Act 1961 setting aside the order passed by the A.O. u/s 143(3) dated 01/01/2021 to be made afresh in the light of the observation made by the Ld. PCIT in the impugned order u/s 263 is unjustified and not maintainable in law and accordingly liable to be vacated.
2. That a detailed enquiry and investigation in this case was made by the AO during assessment proceedings and he issued to assessee various notices u/s. 143(2) and u/s 142(1) and the compliances were duly made by the assessee to all these notices. It is further submitted that the assessee furnished various replies, details and supporting documents before the A.O.
3. That the assessing officer has very clearly mentioned in para 3 of the assessment order, "after perusal of the Return of income, material available on the record and the reply filed on 03/12/2020 and 24/12/2020 in response to the notices issued u/s 142(1) of the Act, the explanation of the assessee on the above issue is accepted and no addition is made".
4. That the assessee aged about 56 years as on 31/03/2018 is regularly assessed to income tax from last more than three decades. The assessee's claim of deductions of expenditure on interest, brokerage etc. were allowed in earlier years too.

5. After giving the above facts it is respectfully submitted that the impugned order passed by the learned PCIT is not maintainable since the mandatory statutory requirement provided in the IT Act for a valid assumption of jurisdiction u/s. 263 remains unfulfilled and unsatisfied. It is respectfully submitted that the provisions of section 263 can be validly invoked only if the twin conditions that the assessment order is erroneous and that it is prejudicial to the interest of the revenue exist. In the present case none of the two conditions exists. In this regard the assessee craves leave to refer to and rely upon the judgment of honorable Supreme Court in the case of Malabar Industrial Company Limited v/s CIT 243 ITR 83 wherein the supreme court held that this provision i.e. section 263 cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind-

6. That the hum'ble appellant craves leave to refer to and rely upon the case of CIT v/s. Sunil Sankhla reported in (2019) 411 ITR 437 (Rajasthan High Court) wherein the hon'ble jurisdictional high court observed that the commissioner passed the revision order on the ground that the A.O. has passed the order without verification. The Tribunal had held that the A.O. has passed the order after examining the details and the financial statements and on that basis had accepted the business profit declared by the assessee and had adopted a view that the order passed by the assessing officer was not prejudicial to the interests of the revenue and that the principal commissioner was not justified to replace the assessing officer's view. The hon'ble high court upheld the order of the Appellate Tribunal. It is submitted by the humble appellant that in the present case also the order was made by the A.O. after due verification of the details submitted.

7. The assessee further places reliance on the judgments in the case of CIT v/s. Valliammal 230 ITR 695 and DIT v/s Jyoti foundation 357 ITR 388 wherein the honorable court held that this section cannot be invoked by ignoring a genuine transaction or on the ground that verification of accounts was needed. The assessee also places reliance on the case of CIT v/s. Reliance Communication Limited 396 ITR 217. In this judgment it was held that if the AO has inquired into the issue before passing the assessment order, it cannot be said that the assessment order is erroneous merely because reference to the said inquiry was not made in the assessment order. Reliance is also placed on the judgment of Sunil Kumar Rastogi v/s CIT 406 ITR 306. In this case honorable court held that assessment order, in any case, cannot be revised on the ground

that the deeper inquiry ought to have been made or proper exercise was not done while making the assessment.

8. That without prejudice to submissions made above in para no. 1 to 7 of this very reply letter and in the alternative, the humble appellant craves leave to further make following respectful submissions:

i. That the assessee is partner in two partnership firms, namely, M/s. Bhairun Dan Jaskaran and M/s. Chopra Brothers. Besides he has income from other sources including interest and also income from STCG on listed securities (STT paid).

ii. In relation to income from interest the assessee, in the course of assessment proceedings filed full details of interest earned and paid. Besides he filed copy of his account with the above named partnership firms wherein he is a partner.

iii. As regards deductions claimed u/s. 57 of the I.T. Act the assessee filed bifurcation of these deductions in the nature of various expenses like interest payment, brokerage payment etc. Person wise details of interest payment of Rs. 2,06,07,468/-, containing inter alia name of the person, his/her PAN, period for which interest paid were also filed. The assessee also filed details of various other expenses claimed u/s. 57 in the nature of brokerage paid at Rs. 21,32,687/-, bank charges at Rs. 213/- and legal expenses at Rs. 17,300/- during the previous year ended on 31.03.2018.

iv. In the course of assessment proceeding as well as before the Id. PCIT who passed order u/s 263, the assessee filed details of income earned and relevant expenses incurred by him. From the perusal of these details the hon'ble Bench will kindly see that the expenses incurred against interest earned are interest paid at Rs. 2,06,07,468/-, brokerage paid at Rs. 21,32,687/-, bank charges at Rs. 213/- and legal expenses at Rs. 17,300/-.

v. It is further submitted that in addition to the interest earned at Rs. 1,25,50,652/- from various parties (these parties are other than the partnership firms wherein assessee is a partner) the assessee has earned interest of Rs. 56,14,891/- from M/s. Chopra brothers and interest of Rs. 3,56,501/- from M/s. Bhairun Dan Jaskaran. In both these partnership firms the assessee is a partner and received interest on the capital employed with both these partnership firms. Part of the borrowed funds on interest from various persons have been parked as capital with the partnership firm M/s. Chopra Brothers and Bhairun Dan Jaskaran and both allowed interest totaling to Rs. 59,71,392 (Chopra Brothers Rs. 56,14,891+ Bhairun Dan Jaskaran Rs. 3,56,501) on the capital employed.

vi. It is further submitted that all the above mentioned expenses totaling to Rs. 2,27,57,668/- incurred on interest payment, brokerage payment, bank charges and legal exp have been wholly and exclusively incurred for the purpose of earning interest income from various parties and from the partnership firms M/s Chopra Brothers and M/s BhairunandJaskaran, wherein assessee is a partner. Here it may be repeated that assessee has earned interest of Rs. 56,14,891/- from M/s. Chopra brothers and interest of Rs. 3,56,501/- from M/s. BhairundanJaskaran and this income has duly been shown in the return of income for A. Y.2018-19 which is the year under appeal.

vii. The assessee hereby further submits that all the expenses claimed u/s. 57 of the IT Act are incurred for earning income from interest by giving on loan borrowed funds to various parties and also making investment as capital in the partnership firm M/s. Chopra Brothers and BhainrudanJaskaran wherein assessee is a partner. As mentioned about interest at Rs. 56,14,891/- and Rs. 3,56,501 has been received from M/s Chopra Brothers and BhainrudanJaskaran respectively on the capital investment. Moreover all the expenses including brokerage and interest have been paid through banking channels.

viii. Moreover in principle the learned PCIT agrees in para 10 of the impugned order when he says, "As per section 57(iii) of the Act, income chargeable under the head "Income from other sources" should be computed after allowing deduction for any expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income. In this case gross total income from interest earned by the assessee is as follows:-

1. Interest on saving Bank A/c with Vijaya Bank	Rs. 162/-
2. IDBI Bank	Rs. 212/-
3. Kotak Mahindra	Rs.4,038/-
4. Interest from other parties (these parties are other than the partnership firms wherein assessee is a partner)	Rs. 1,25,50,652/-
	<u>Rs. 1,25,55,064/-</u>

Add: Interest received from M/s Chopra Brothers and M/s. BhairundanJaskaran wherein assessee is a partner, at Rs.59,71,392 (Rs. 56,14,891 from M/s Chopra Brothers + Rs 3,56,501 from M/s BhairundanJaskaran)

Rs. 59,71,392/-  
**Total: RS. 1,85,26,456/-**

ix That while working out total amount of interest earned by assessee at Rs. 1,25,55,064, the Id. PCIT failed to take into consideration interest earned, by the assessee by investing the borrowed funds in the partnership firms, namely, M/s

Chopra Brothers and M/s. BhairundanJaskaran wherein assessee is a partner, at Rs.59,71,392 (Rs. 56,14,891 from M/s Chopra Brothers + Rs 3,56,501 from M/s BhairundanJaskaran).

x After adding this amount of interest earned by assessee at Rs. 59,71,392 from above mentioned both the partnership firms, the total income earned by the assessee against the interest paid at Rs. 2,06,07,468 will come to Rs.1,85,26,456 and not Rs.1,25,55,064 as wrongly worked out by the Id. PCIT and .

xi It is further submitted that in computing the income u/s. 57(iii), deduction is to be made in respect of expenditure incurred solely for the purpose of earning such income, provided the expenditure is not in the nature of capital expenditure or personal expenses of the assessee. InVijayaLaxmi Sugar Mills v CIT, the Supreme Court explained that the requirement under section 57(iii) that the expenditure should have been incurred for the purpose of making or earning such spending, should be for earning the interest income: there should be some nexus between the expenditure incurred and the earning of the income.

9. It is submitted that the deductions claimed u/s. 57 at Rs. 2,27,57,668/- in respect of interest payment, brokerage payment ,bank charges and legal exp.have been wholly and exclusively incurred for the purpose of earning interest income of Rs. 1,85,26,456 and not Rs. 1,25,55,064 as wrongly worked out by the learned PCIT.

10. The assessee hereby submits that all the expenses claimed u/s. 57 of the IT Act are incurred for earning income under the head income from other sources and have been paid through banking channels.

2.4 On the other hand, the Id DR supported the order of the Id. PCIT and particularly heavily emphasized the finding of the Id. PCIT recorded at para 12 and 13 of the order of the PCIT when the PCIT categorically emphasized the fact that the Id. AO has not verified the identity of the creditors and brokers and the details where not placed on record.

2.5 We have heard the rival contentions and perused the material placed on record. Ld. AR has vehemently argued that the powers of PCIT to invoke the

provisions of Sect 263 requires two conditions precedent one the order passed by the Assessing Officer is erroneous second such order is prejudicial to the interest of Revenue. Where even one of the conditions mentioned above is satisfied but the other one is not the power of revision invoked by Id PCIT may be challenged. He also argued that in the instant case the AO has passed the assessment order after considering entire material available on record, called for and submitted by assessee during the course of assessment proceedings. It is not the case that the AO had passed the order without conducting any inquiries into the issue under consideration and specific details regarding interest payment and brokerage payment to persons and allowability of the same was duly asked for assessee and have been submitted by the assessee, which after due verification have been allowed byAO.In context of the above and in accordance with the guiding judicial precedents as well as legal position the revisionary order thus cannot be passed merely to review the opinion formed by Id. AO for the reason that a higher authority does not concur with the view taken by Id. AO, without there being any substantive material in possession of such higher authority that has not been considered by Id. AO while forming such opinion.Reliance is placed on the following decisions: -

**CIT v/s Rajasthan Financial Corporation (1996) 134 CTR 145 (Raj)** held that: “Once Assessing Officer has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the Assessing Officer allowed the claim being satisfied with the explanation of assessee, the decision of the Assessing Officer cannot be held to be erroneous simply because in his order not make an elaborate discussion in that regard

**Commissioner Of Income Tax vs Ganpat Ram Bishnoi (2005) 198 CTR Raj 546, 2008 296 ITR 292 Raj (copy enclosed)** held that, “Undoubtedly, the jurisdiction under Section 263 is wide and is meant to ensure that due revenue ought to reach the public treasury and if it does not reach on account of some mistake of law or fact committed by the AO, the CIT can cancel that order and require the concerned AO to pass a fresh order in accordance with law after holding a detailed enquiry. But when enquiry in fact has been conducted and the AO has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, in the present case, without anything to say how and why the enquiry conducted by the AO was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside. Jurisdiction under Section 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something. 12. The finding of the Tribunal that the ITO had passed assessment order after relevant enquiries and considering the aspects of the matter required by the CIT to be considered by him is a finding of fact and on the basis of which, the jurisdiction assumed by the CIT being non-existent must be held to be not sustainable”

**Hon’ble ITAT Jaipur bench in the case of Annu Agrotech Vs. PCIT in ITA no. 9/JP/2021 dated 15.09.2021 (copy enclosed), wherein relying on the decision of the Hon’ble Apex Court in the case of M/s Malabar Industrial Co. Ltd it has been held that,** “This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to Revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the

AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law”

**Similar view has again been taken by the Hon’ble ITAT Jaipur bench in the case of M/s Agrani Buildestate Vs. PCIT in ITA No. 205/JP/2023 dated 03.07.2023 (copy enclosed)**

**Hon’ble Karnataka High Court in the case of CIT Vs. Cyber Park Development & Construction Ltd. (276 Taxmann 460)**, wherein held that when the AO allowed the claim of assessee after due application of mind and on proper consideration of the material available on record, the order passed by AO can neither said to be erroneous nor prejudicial to the interests of revenue. Therefore, the order of Ld. CIT passed u/s 263 of the Act cannot be sustained.

**CIT Vs. Sunbeam Auto Ltd.**, reported in **227 CTR 133**, the Hon’ble Delhi High Court drew a distinction between “Lack of inquiry” and “inadequate enquiry” and held that, ‘in the case of inadequate enquiry, provisions under section 263 cannot be invoked.’ It may however, be noted that the instance case is neither the case of inadequate enquiry nor lack of enquiry during assessment proceedings as it can be seen that due enquiries were conducted by the Ld. AO. Therefore, in view of such legal position, no action u/s 263 can be taken.

The above contention of assessee is further fortified by the judgment of Hon’ble Supreme Court in the case of **CIT v. Gabriel India Ltd.** reported in **203 ITR 109 (Bom)** wherein it has been held as under:

-Revision--Exercise of power of CIT to make revision suomotu--Conditions precedent--CIT cannot revise order merely because he disagrees with conclusion arrived at by ITO--Expenditure allowed by ITO as being revenue in nature--CIT reopening matter under section 263 and hearing assessee--CIT directing ITO to re-hear matter--Order not valid--Income-tax Act, 1961, s. 263-

**It has also been held by the Court that section 263 does not arm the CIT to trespass into this peculiar jurisdiction of the Assessing Officer so as to direct him to exercise this discretion with a bent of mind conforming to the CIT’s opinion or in other words, towards generation of some extra revenue. It is a well established law by now that section 263 does not contemplate mere substitution of the opinion of AO with that of CIT.**

It has been held in the case of **CIT v. Max India Ltd.** reported in **295 ITR 282 (SC)** that ‘every loss of revenue cannot be said to be prejudicial to the interests of revenue’, however in this case interestingly, there has been no loss at all to the revenue, accordingly, it cannot be said that the action of Ld. AO was prejudicial to the interest of revenue. Thus, no action u/s 263 is called for. This submission of assessee is fortified from the observations of Hon’ble Supreme Court in the case of **CIT Vs. Max India** (supra) wherein it was held as under:

The phrase “prejudicial to the interests of the Revenue” in section 263 of the Income-tax Act, 1961, has to be read in conjunction with the expression “erroneous” order passed by the Assessing Officer. **Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when the Assessing Officer adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the Assessing Officer is unsustainable in law.**

**Antala Sanjay kumar Ravjibhai v. CIT [2012] 135 ITD 506 (Rajkot) (Trib.), Manish Kumar v. CIT [2012] 134 ITD 27 (Indore) (Trib.)** held that section 263 does not visualize a case of substitution of judgment of Commissioner for that of the Assessing Officer, unless the decision is held to be erroneous.

**Allied Engineers v. CIT [2009] 180 Taxman 70 (Mag.) (Delhi) (Trib.)** held that order passed by the Assessing Officer in accordance with law, judicial pronouncements and after considering relevant replies duly supported by evidence cannot be branded as erroneous, merely because the Commissioner is of other view or in his opinion order passed is weak and not a detailed order.

**Antala Sanjaykumar Ravjibhai v. CIT [2012] 135 ITD 506 (Rajkot) (Trib.), Roshan Lal Vegetable Products (P) Ltd. v. ITO [2012] 51 SOT 1 (URO) (Asr.)(Trib.), Fine Jewellery (India) Ltd. v. ACIT [2012] 19 ITR 746 (Mum.)(Trib.)** held that in these cases, since the Assessing Officer made proper enquiry and examined accounts, it could not be said that there was non-application of mind by him. Hence, the action under Section 263 was held invalid.

**Anil Shah v. ACIT [2007] 162 Taxman 39 (Mum.)(Trib.)** held that if the Assessing Officer allows the claim, on being satisfied with the explanation of assessee, on an enquiry made during the course of Assessment Proceedings, the decision of the Assessing Officer cannot be held to be erroneous, on ground that there is no elaborate discussion in that regard in the order. It is the practice that whenever any claim of the assessee is accepted, the A.O may not discuss the same in his order”.

In addition to the above, the ld. AR of the assessee has drawn out attention on the following legal position as regards the initiation of proceedings u/s 263 of the Act:

*It is settled law that basic ingredients are to be fulfilled before invoking section 263 which has been explained by the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. Vs. CIT reported in 243 ITR 83 (SC) in the following words:*

*“A bare reading of section 263 of the Income Tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income Tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent – if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue – recourse cannot be had to section 263(1) of the Act.”*

It is therefore observed that the Ld. AO has taken a legal and correct view of the entire material available before him and after making application of mind as a duly instructed person on law and facts and any conclusion having been reached to a reasonable satisfaction of accepting the returned income, thus the order of Ld. AO

is neither erroneous nor prejudicial to the interest of the revenue on any count. Indeed, in the instant case the Ld. AO has passed this order after considering entire material available on record, called for and submitted by assessee during the course of assessment proceedings. It is not the case that the Ld. AO had passed the order without conducting inquiries into the issue under consideration and specific details regarding salary to specified persons and allowability of the same was duly asked for and have been submitted by the assessee, which after due verification have been allowed by .AO. We also draw our attention to the provisions of Section 263 as applicable for the relevant AY (2018-19):

***“Revision of orders prejudicial to revenue.***

**263.** (1) *The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*

*Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—*

- (a) *an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—*
  - (i) *an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*
  - (ii) *an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;*

- (b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;
- (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

**Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—**

- (a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

A bare reading of clause (a) to the Explanation 2 of Section 263(1) enables a deeming fiction for the CIT to treat the order of AO erroneous in so far as prejudicial to the interest of revenue if in the opinion of CIT the order is passed without making inquired or verification which should have been made. This again substantiates that the assessee challenging the validity of Sec 263 is completely valid as in the present case the assessment order was passed after making due enquiry as well as verification from the assessee hence the CIT has no power to invoke the power provided under section 263 of the Act. We also note that that the revisionary order passed u/s 263 of the Act, needs to be quashed as the order passed by Ld. AO does not come in the purview of holding it to be either erroneous

or prejudicial to the interest of the revenue entailing the consequence of order to be either modified / set aside in any manner. For this, reliance is place on the following case laws

**1. CIT Vs. M/s Chambal Fertilizers & Chemicals Ltd. (Raj HC) 51 TW (III) 157**

*Therefore, it is clear the CIT does not have unfettered and un-checked discretion / power to reverse the order. He can do so within the bounds of the law and has to satisfy the need of fairness in action and fair play with due respect to the principle of Audi Alterem Partem as envisaged in the Constitution. The law is well settled that the CIT cannot invoke the powers to correct each and every mistake or error committed by the AO. Every loss to the Revenue, cannot be treated as prejudicial to the interest of the Revenue and if the Assessing Officer has adopted one of the course permissible under the law or where two views are possible and the AO has taken one view which the CIT does not agree with, it cannot be treated as an order erroneous and prejudicial to the interest of the revenue. The AO exercises quasi judicial power vested in him and if he exercises such powers in accordance with law, arrives at a just conclusion such conclusion cannot be termed as erroneous only because the CIT does not feel satisfied with the conclusion.*

**2. CIT Vs. M/s Deepak Real Estate Developers P. Ltd. (Raj HC) 51 TW (IV) 186**

*It is no longer res-integra that the revisional jurisdiction available to a Commissioner u/s 263 of the Act, is essentially circumscribed by the determinant that the order of the Assessing Officer is erroneous so much so that it is prejudicial to the interest of the revenue. This statutory enjoinder carves out an extremely constricted ambit of such discretionary jurisdiction. The word 'considers' applied in the statutory provision involved, signifies a genuine satisfaction of that authority that the order of the Assessing Officer is erroneous and that the interest of revenue is prejudicing thereby. Any exercise of the revisional jurisdiction, bereft of such satisfaction and / or finding that the order of the Assessing Officer is erroneous and that it is prejudicial to the interest of the revenue and that too, based on tangible materials on record, is impermissible rendering the resultant order void.*

**3. CIT Vs. Green World Corporation 314 ITR 81 (SC)**

*The Income-tax Officer, while passing an order of assessment performs a judicial function. A revision application lies before the Commissioner. It is trite*

*that the jurisdiction exercised by the revisional authority pertains to his appellate jurisdiction. The jurisdiction under section 263 can be exercised only when both the following conditions are satisfied (i) the order of the Assessing Officer should be erroneous, and (ii) it should be prejudicial to the interests of the Revenue. These conditions are conjunctive. An order of assessment passed by the Assessing Officer should not be interfered with only because another view is possible.*

**4. M/s Emgee Cables & Communication Ltd. Vs. CIT (2014) 51 TW (IV) 197**

*Section 263 – power of revision by commissioner – AO completed assessment at NIL – assessee involved in manufacture / trading of cable/copper/wire – declared income from interest & commission as business income – accepted by AO – CIT invoked sec 263 and set-aside the order of AO directing him to consider the said income as income from other sources and not from business – whether CIT justified in invoking sec 263? **Held:** No – CIT only wanted AO to make re-verification – cannot be said that that order of AO was without making proper enquiry – AO having taken one of the possible view – cannot be said that assessment order was erroneous and prejudicial to the interest of revenue.*

The ld. AR of the assessee also submitted the assessment order passed for A. Y. 2017-18 wherein the similar claim made was considered as allowed. We note from the order of the PCIT that he finding fault and intend to direct the ld. AO to make enquiry the way in his view. The same is appearing from the following observation :

12 The assessee has paid interest of Rs 2,06 07,468/- to sundry creditors and brokerage of Rs.21,32,687/- to various parties. During the course of proceedings under section 263 of the Act, the assessee furnished list of 250 parties from whom interest had been paid during the year. The said list mentions the PAN and interest amount as well as the remark that the payment has been made by Bank. However, no bank account statement has been furnished by the assessee. In 185 of the 250 cases listed above the address has been mentioned as “Jaipur” “Churu” “Arunachal Pradesh” etc. which appears to be non-traceable. Moreover the assessee has furnished confirmation from 23 parties only. Perusal of dated 31/12/2020 placed on the assessment record which was submitted by the assessee during the course of assessment proceedings shows that

the assessee has not submitted even the above documents before the AO. Thus, the Interest paid by the assessee was not inquired into by the AO during the course of assessment proceedings.

Thus, it is clear that he is finding fault in the details called for by the ld. AO the same claimed was allowed in the earlier year and no fault is found and therefore, PCIT cannot be made basis for doubting the claim made in current year and duly allowed by AO after due verification. This in our considered opinion renders the revision proceedings invoked by ld. PCIT beyond jurisdiction and against the legal principals laid down through various judicial pronouncements. We take support of our view from the **decision of the Hon'ble Apex Court in the case of M/s Malabar Industrial Co. Ltd it has been held that, "This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to Revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with**

*which the CIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law*". Considering the totality of the facts and circumstances of the case, legal position as well as judicial pronouncements, we found merit in the contention of Id. AR, therefore we quash the order passed by Id. PCIT under section 263 of the Act.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 28/02/2024

Sd/-

Sd/-

(संदीप गोसाईं)

(राठोडकमलेशजयन्तभाई )

(Sandeep Gosain)

(Rathod Kamlesh Jayantbhai)

न्यायिकसदस्य / Judicial Member

लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28 /02/2024

\*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Roop Kumar Chopra, Jaipur
2. प्रत्यर्थी / The Respondent- Pr. CIT, Jaipur-1
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 264 /JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar